

# **THE STATE OF NEW HAMPSHIRE**

## **SUPREME COURT**

**In Case No. 2003-0506, State of NH v. Gregorio B. Guardarramos-Cepeda, the court on September 24, 2004, issued the following order:**

Following a jury trial, the defendant, Gregorio B. Guardarramos-Cepeda, was convicted of possession of five grams or more of heroin with intent to sell and conspiracy to sell five grams or more of heroin. On appeal, he contends that the trial court erred when it denied: (1) his motion to dismiss the conspiracy charge for lack of sufficient evidence; and (2) his request to charge the jury on the testimony of informants. We affirm.

“A person is guilty of conspiracy if, with a purpose that a crime defined by statute be committed, he agrees with one or more persons to commit or cause the commission of such crime, and an overt act is committed by one of the conspirators in furtherance of the conspiracy.” RSA 629:3, I (1996). The defendant contends that the conspiracy indictment charged that the conspiracy was between the defendant and his wife, Sanny Montas, and that the State failed to prove any agreement between them to sell heroin. To be sufficient to convict, circumstantial evidence must exclude all rational conclusions other than the guilt of the defendant in a case where there is only circumstantial evidence to support the conviction. See State v. Chapman, 149 N.H. 753, 758 (2003).

The evidence included that Montas drove the defendant to New Hampshire to deliver heroin, that a receipt for the phone used to make the sale arrangements had Montas’ name on it, that materials consistent with those used to package the heroin, including paper towels and part of a Walmart shopping bag were found on the floor of the truck that Montas drove to New Hampshire, that Montas drove the defendant to the location where the drugs were hidden, then to the meeting place with the buyer/informant (informant) and then followed him back to where the drugs were hidden. While Montas was driving the defendant to New Hampshire, the defendant had more than one conversation with the informant. Although the defendant contends that the evidence presented permits a rational conclusion that Montas thought the trip to New Hampshire was to purchase cabinets, the remains of the materials used to wrap the heroin and the actual locations to which she drove belie such a conclusion. We therefore conclude that the evidence excluded all rational conclusions except that Montas agreed to assist the defendant in the sale of heroin.

The defendant also contends that the trial court erred by failing to give a jury instruction on informant testimony. We note that the defendant did not

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submit such an instruction. Even if we assume without deciding, however, that the issue has been preserved for our review and that the trial court should have given an informant instruction, we conclude on the facts of this case that the failure constituted harmless error. See State v. Mason, 150 N.H. 53, 62 (2003) (error may be harmless beyond reasonable doubt if alternative evidence of defendant's guilt is of an overwhelming nature, quantity, or weight and if the inadmissible evidence is merely cumulative or inconsequential in relation to the strength of the State's evidence of guilt). The evidence presented included the heroin and the remains of the packaging materials found in the truck, the transcripts of conversations between the informant and the defendant, and the testimony of the police. In addition, defense counsel engaged in extensive questioning designed to impeach the informant, including the issues of his prior convictions and false statements. Based on the record in this case, we conclude that any error caused by the failure to give an informant instruction was harmless beyond a reasonable doubt.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,  
Clerk**

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